U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

DD

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

[redacted]

Date: APR 28 2000

IN RE: Applicant: [redacted]

APPLICATION: [redacted]

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 6, 1963, in General Treviño, Neuvo Leon, Mexico. The applicant's father, [redacted] was born in Mexico in 1929 and never had a claim to U.S. citizenship. The applicant's mother, [redacted], was born on March 8, 1943 in Mexico and she acquired U.S. citizenship at birth through her mother (the applicant's grandmother). The applicant's parents married each other on August 1, 1961 in Visilia, California. The applicant claims that he acquired United States citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Act at the time of the applicant's birth.

On appeal, counsel disagrees with the decision and argues that the Service did not consider all evidence in the record. Counsel submits a copy of his sister [redacted] alien registration receipt card indicating that she was born in Mexico on May 17, 1962 and was lawfully admitted for permanent residence on July 12, 1962. Counsel refers to his mother's statement in an interview that she had given birth to her first two children (the applicant and [redacted] in Mexico because she and the applicant's father were visiting her father's parents temporarily when each child was born. Counsel alleges that the applicant was unable to obtain his mother's prenatal records for either the applicant or his sister or records of the applicant's broken leg at the age of one year. Counsel states that the mother's oral testimony and other affidavits are the best evidence available.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Section 12 of the Act of November 14, 1986, (Pub.L. 99-653, 100 Stat. 3657), shortened the required period of United States residence for the citizen parent amendments substituted "five years, at least two" for "ten years, at least five", effective for persons born on or after November 14, 1986.

The Service examined numerous related records and files; affidavits from close relatives and friends; the mother's school and social security records; the father's social security records, titles to a home and automobile; family photos and an on site investigation was conducted in the town of General Treviño where the school director and other relatives were interviewed.

The record indicates that the applicant's mother [redacted] (hereafter referred to as [redacted] testified under oath in January 1960 that she first entered the United States on March 25, 1953 at the Port of Hidalgo, Texas. This fact allows [redacted] only 10 years, 10 months and 10 days to establish the 10 years of physical presence in the United States prior to the applicant's birth with a leeway of 10 months and 10 days.

In an interview conducted on February 7, 1997 a secretary/teacher, who was working at the [redacted] in General Treviño, N.L., Mexico when the applicant's mother attended school there and who still works at that school, stated that [redacted] studied at the school for periods of time during the years from 1949 to 1955. This statement from a teacher who was present at the school [redacted] attended subtracts time from the 10 month and 10 day leeway.

After [redacted] first entered the United States on March 25, 1953, instead of starting school in September 1953, she started school in the Third Grade in Edcouch, Texas on January 4, 1954 and withdrew on April 26, 1954. [redacted] re-enrolled in the Third Grade on November 30, 1954, attended class for 78 1/2 days and withdrew from school on April 22, 1955. She received no grades for that year due to insufficient attendance. [redacted] enrolled in the Fourth Grade on January 5, 1956, attended class for 85 days and withdrew on May 25, 1956. She received partial grades for that year. [redacted] re-enrolled in an unstipulated grade on February 7, 1957 and withdrew from school on March 13, 1957. She received no grades due to insufficient attendance.

The record contains time periods from March 25, 1953 until January 4, 1954 (approximately 9 months), from April 26, 1954 to November 30, 1954 (approximately 7 months), and from April 22, 1955 to January 5, 1956 (approximately 8 months), while [redacted] was away from school in the United States. The total amount of time that [redacted] was away from school in the United States is 24 months and the absences occurred during a time period when an eye witness states that [redacted] attended school in Mexico part of that time between March 1953 and January 1956.

The applicant's sister [redacted] was born in Mexico on May 17, 1962 and was lawfully admitted to the United States on July 12, 1962. This fact subtracts another two months from the 10 month and 10 day leeway. The one month that [redacted] alleges to have spent in Mexico giving birth to the applicant subtracts additional time from the 10 month and 10 day leeway.

Other testimony from witnesses who live in General Treviño indicates that [redacted] remained in Mexico after her marriage in 1961 and that is why she gave birth to the applicant and his sister in Mexico.

The record contains testimony which places [redacted] in Mexico shortly after her first entry in 1953 until 1955. School record reflect that [redacted] entered the U.S. school system in 1954 but had lengthy absences. The record further contains testimony which places her in Mexico shortly after her marriage in 1961 until after the applicant's birth. There are no records to show that [redacted] returned to the United States shortly after the applicant's birth or between the applicant's birth and 1965 when [redacted] was employed in the United States.

Absent additional corroborative and convincing evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his mother was physically present in the United States for the required period prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.The applicant has not met this burden of establishing that his mother had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.